

Appl. No. 09/980,383  
Amdt. Dated September 2, 2003  
Reply to Office action of May 1, 2003

### REMARKS/ARGUMENTS

The applicant respectfully offers that the claims, as amended, are supported by the specification of the current application, which "contain[s] a written description of the invention ... in such full, clear, concise, and exact terms as to enable any person skilled in the art ... to make and use the same..."

Claim 33 has been amended to include the form of the thermoset material and thermoplastic material. The chopped, shredded or fragmented form of the thermoset material is supported by the specification at page 3, lines 5 - 6. The chopped or shredded form of the thermoplastic material is supported by the specification at page 4, lines 21 - 22. These limitations were previously included in claims 35 and 40, now cancelled.

Applicant respectfully offers that the relative proportions of thermoset and thermoplastic resin is suggested by the specification and the drawings. The specification discloses that the thermoplastics must meld with the other materials (page 10, lines 10 - 11). Therefore, there must be enough thermoplastic relative to the other materials in the mixture that the thermoplastic will hold all of the materials together. Figures 6 and 8 are detailed schematic views of parts of the material of an embodiment of the invention. These figures show varying relative amounts of thermoset relative to thermoplastic resin. Applicant respectfully offers that based upon the disclosures in the specification and the drawings, that a person of ordinary skill in the art is able to determine the amount of thermoset and thermoplastic is necessary to practice the invention.

Applicant has amended the claims to overcome 35 U.S.C. § 112, second paragraph rejection. The claims should now claim a structure with openings for fluid flow and a method for making such a structure.

It is noted that when a homogenous material is heated, uniform melting will occur. When the amounts and types of material are varied, heating the mixture will result in lattice-like structure due to the differences in melting temperatures. By employing thermoset material mixed with thermoplastic material, heating the mixture will melt some material, while other material remains solid. Thus, when cooled, a rigid structure will remain with interstices through which fluid may travel.

Applicant respectfully requests reconsideration of the findings of obviousness in light of the prior art, particularly *Kallenberg*, with regards to claims 33-40 and 50-54. To establish a prima facie case of obviousness, [1] there must be some suggestion or motivation to modify the reference or combine the reference teachings; [2] there must be some reasonable expectation of success; and [3] the prior art must teach or suggest all the claim limitations. MPEP § 706.02(j). All three requirements must be met for a valid finding of obviousness. The applicant respectfully submits all of the requirements have not been met.

*Kallenberg* includes no reference to the inclusion of a thermoset material in his drainage mat. The process described in *Kallenberg* requires that the "material manufactured from plastic waste in this way is cleaned." (Abstract, line 7; Specification, page 1, line 25, English Translation). "Cleaned," in this context can only be understood as a reference to removal of

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contaminants, which thermoset components would certainly represent in waste thermoplastics material. Because *Kallenberg* is completely silent about the presence of thermoset inclusions in the waste plastics used and requires waste plastics to be clean, the applicant maintains that there is no suggestion of the specific requirement of the present invention that thermoset material be included in the composition of the invention.

Applicant respectfully requests reconsideration of the findings of obviousness over *Kallenberg* in light of *Maynes*. *Maynes* teaches a drainage material in which a net holds a plurality of spheres, creating voids through which fluid may pass.

Of the claims presented, only claim 41 teaches the use of a net to hold the fluid transfer material. However, neither *Maynes* nor *Kallenberg* teach the use of thermoset material in the fluid transfer material. Therefore, all of the claim limitations of applicant's invention are not taught or suggested by the prior art.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

  
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